

## **IC 36-2-2**

### **Chapter 2. County Executive**

#### **IC 36-2-2-1**

##### **Application of chapter**

Sec. 1. This chapter applies to all counties not having a consolidated city.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.135.*

#### **IC 36-2-2-2**

##### **Board of commissioners to be county executive**

Sec. 2. The three (3) member board of commissioners of a county elected under this chapter is the county executive. In the name of "The Board of Commissioners of the County of \_\_\_\_\_" the executive shall transact the business of the county.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-3**

##### **Election of executive; terms**

Sec. 3. (a) The executive shall be elected under IC 3-10-2-13 by the voters of the county. The number of members to be elected to the executive alternates between one (1) and two (2) at succeeding general elections.

(b) The term of office of a member of the executive is four (4) years, beginning January 1 after election and continuing until a successor is elected and qualified.

*As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.5-1986, SEC.33.*

#### **IC 36-2-2-4**

##### **Division of county into districts; membership, duties, and compensation of county redistricting commission; single-member district criteria; recertification of districts; filing with circuit court clerk; time for filing; district boundary description prevails over conflicting map**

Sec. 4. (a) This subsection does not apply to a county having a population of:

(1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or

(2) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000).

The executive shall divide the county into three (3) districts that are composed of contiguous territory and are reasonably compact. The district boundaries drawn by the executive must not cross precinct boundary lines and must divide townships only when a division is clearly necessary to accomplish redistricting under this section. If necessary, the county auditor shall call a special meeting of the executive to establish or revise districts.

(b) This subsection applies to a county having a population of

more than four hundred thousand (400,000) but less than seven hundred thousand (700,000). A county redistricting commission shall divide the county into three (3) single-member districts that comply with subsection (d). The commission is composed of:

- (1) the members of the Indiana election commission;
- (2) two (2) members of the senate selected by the president pro tempore, one (1) from each political party; and
- (3) two (2) members of the house of representatives selected by the speaker, one (1) from each political party.

The legislative members of the commission have no vote and may act only in an advisory capacity. A majority vote of the voting members is required for the commission to take action. The commission may meet as frequently as necessary to perform its duty under this subsection. The commission's members serve without additional compensation above that provided for them as members of the Indiana election commission, the senate, or the house of representatives.

(c) This subsection applies to a county having a population of more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000). The executive shall divide the county into three (3) single-member districts that comply with subsection (d).

(d) Single-member districts established under subsection (b) or (c) must:

- (1) be compact, subject only to natural boundary lines (such as railroads, major highways, rivers, creeks, parks, and major industrial complexes);
- (2) contain, as nearly as is possible, equal population; and
- (3) not cross precinct lines.

(e) Except as provided by subsection (g), a division under subsection (a), (b), or (c) shall be made:

- (1) during the first year after a year in which a federal decennial census is conducted; and
- (2) when the county adopts an order declaring a county boundary to be changed under IC 36-2-1-2.

(f) A division under subsection (a), (b), or (c) may be made in any odd-numbered year not described in subsection (e).

(g) This subsection applies during the first year after a year in which a federal decennial census is conducted. If the county executive or county redistricting commission determines that a division under subsection (e) is not required, the county executive or county redistricting commission shall adopt an ordinance recertifying that the districts as drawn comply with this section.

(h) Each time there is a division under subsection (e) or (f) or a recertification under subsection (g), the county executive or county redistricting commission shall file with the circuit court clerk of the county, not later than thirty (30) days after the division or recertification occurs, a map of the district boundaries:

- (1) adopted under subsection (e) or (f); or
- (2) recertified under subsection (g).

(i) The limitations set forth in this section are part of the ordinance, but do not have to be specifically set forth in the ordinance. The ordinance must be construed, if possible, to comply with this chapter. If a provision of the ordinance or an application of the ordinance violates this chapter, the invalidity does not affect the other provisions or applications of the ordinance that can be given effect without the invalid provision or application. The provisions of the ordinance are severable.

(j) If a conflict exists between:

- (1) a map showing the boundaries of a district; and
- (2) a description of the boundaries of that district set forth in the ordinance;

the district boundaries are the description of the boundaries set forth in the ordinance, not the boundaries shown on the map, to the extent there is a conflict between the description and the map.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1980, P.L.125, SEC.13; Acts 1981, P.L.11, SEC.136; Acts 1981, P.L.17, SEC.6; P.L.10-1988, SEC.236; P.L.13-1988, SEC.13; P.L.5-1989, SEC.87; P.L.12-1992, SEC.150; P.L.2-1996, SEC.287; P.L.122-2000, SEC.20; P.L.230-2005, SEC.82; P.L.119-2012, SEC.179; P.L.271-2013, SEC.46.*

#### **IC 36-2-2-4.5**

##### **Territory not included in any district**

Sec. 4.5. (a) If any territory in a county is not included in one (1) of the districts established under section 4 of this chapter, the territory is included in the district that:

- (1) is contiguous to that territory; and
- (2) contains the least population of all districts contiguous to that territory.

(b) If any territory in any county is included in more than one (1) of the districts established under section 4 of this chapter, the territory is included in the district that:

- (1) is one (1) of the districts in which the territory is described in the ordinance adopted under section 4 of this chapter;
- (2) is contiguous to that territory; and
- (3) contains the least population of all districts contiguous to that territory.

*As added by P.L.3-1993, SEC.256.*

#### **IC 36-2-2-4.7**

##### **Ordinance to divide county into districts**

Sec. 4.7. (a) Whenever the executive divides the county into districts under section 4 of this chapter, the executive shall adopt an ordinance.

(b) The executive shall file a copy of an ordinance adopted under subsection (a) with the circuit court clerk.

*As added by P.L.3-1993, SEC.257.*

#### **IC 36-2-2-5**

**Eligibility; forfeiture of office; number elected**

Sec. 5. (a) To be eligible for election to the executive, a person must meet the qualifications prescribed by IC 3-8-1-21.

(b) A member of the executive must reside within:

- (1) the county as provided in Article 6, Section 6 of the Constitution of the State of Indiana; and
- (2) the district from which the member was elected.

(c) If the person does not remain a resident of the county and district after taking office, the person forfeits the office. The county fiscal body shall declare the office vacant whenever a member of the executive forfeits office under this subsection.

(d) In a county having a population of:

- (1) more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); or
- (2) more than two hundred fifty thousand (250,000) but less than two hundred seventy thousand (270,000);

one (1) member of the executive shall be elected by the voters of each of the three (3) single-member districts established under section 4(b) or 4(c) of this chapter. In other counties, all three (3) members of the executive shall be elected by the voters of the whole county.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.137; Acts 1981, P.L.17, SEC.7; P.L.5-1986, SEC.34; P.L.3-1987, SEC.542; P.L.12-1992, SEC.151; P.L.14-2004, SEC.192; P.L.225-2011, SEC.90; P.L.90-2012, SEC.4; P.L.119-2012, SEC.180.*

**IC 36-2-2-6****Meetings**

Sec. 6. The executive shall hold a regular meeting at least once each month and at other times as needed to conduct all necessary business. Dates of regular meetings shall be established by resolution at or before the first meeting in February of each year.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.138; Acts 1981, P.L.17, SEC.8; P.L.341-1983, SEC.1; P.L.25-2013, SEC.1.*

**IC 36-2-2-7****Disqualification of executive in quasi-judicial proceeding; appointment of special members**

Sec. 7. (a) If the executive finds that two (2) or more of its members are disqualified from acting in a quasi-judicial proceeding, the disqualified members shall cease to act in that proceeding. Within ten (10) days after the finding, the county auditor shall send a certified copy of the record of the proceeding to the judge of the circuit court for the county. If the judge affirms the disqualification of the members of the executive, he shall appoint disinterested and competent persons to serve as special members of the executive in the proceeding.

(b) A person who consents to serve as a special member of

the executive must have the same qualifications as an elected member of the executive. His appointment and oath shall be filed with the county auditor and entered on the records of the executive, and he may act with the other members of the executive conducting the proceeding until a final determination is reached.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-8**

##### **Special meeting; notice**

Sec. 8. (a) If the public interest requires a special meeting of the executive, such a meeting may be called by a member of the executive or by:

- (1) the county auditor;
- (2) the county clerk, if the office of county auditor is vacant; or
- (3) the county recorder, if the offices of county auditor and county clerk are both vacant.

(b) An officer calling a special meeting of the executive shall give at least six (6) days notice of the meeting unless the meeting is called to deal with an emergency under IC 5-14-1.5-5. The notice must include a specific statement of the purpose of the meeting, and the executive may not conduct any unrelated business at the meeting.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1980, P.L.125, SEC.14; Acts 1981, P.L.17, SEC.9.*

#### **IC 36-2-2-9**

##### **Location of meetings**

Sec. 9. The executive may select a location other than the county courthouse for its meetings only if the courthouse is not suitable, is inconvenient, or has been replaced or supplemented by other buildings to house county government offices.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-10**

##### **Business day**

Sec. 10. The executive shall keep its office open on each business day.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.139; P.L.255-1993, SEC.1.*

#### **IC 36-2-2-11**

##### **Records of official proceedings**

Sec. 11. (a) The county auditor shall attend all meetings of, and record in writing the official proceedings of, the executive.

(b) If a copy of the executive's proceedings has been signed and sealed by the auditor and introduced into evidence in court, that copy is presumed to be an accurate record of the executive's proceedings.

*As added by Acts 1980, P.L.212, SEC.1.*

**IC 36-2-2-12****Appointments made by executive**

Sec. 12. Appointments made by the executive shall be certified by the county auditor, under the seal of the executive.

*As added by Acts 1980, P.L.212, SEC.1.*

**IC 36-2-2-13****County officer; employment; requisites; violation; offense; penalty**

Sec. 13. (a) The executive may employ a person:

(1) to perform a duty required of a county officer by statute; or

(2) on a commission or percentage basis;

only if the employment is expressly authorized by statute or is found by the executive to be necessary to the public interest.

(b) If a person's employment under subsection (a) is not expressly authorized by statute, the contract for his employment must be filed with the circuit court for the county, and he must file his claims for compensation with that court. Any taxpayer may contest a claim under this section.

(c) A member of the executive who recklessly violates this section commits a Class C misdemeanor and forfeits his office.

*As added by Acts 1980, P.L.212, SEC.1.*

**IC 36-2-2-14****County administrator; appointment; power and duties; vacancy**

Sec. 14. (a) The executive may appoint a county administrator to be the administrative head of the county under the supervision of the executive and to hold office at the pleasure of the executive. The executive may assign any office, position, or duties under its control to the administrator, and may by resolution withdraw any of the powers and duties assigned.

(b) Under the supervision of the executive and with its express authorization by resolution, the administrator may:

(1) assist in the administration and enforcement of policies and resolutions of the executive;

(2) supervise activities of county government subject to the control of the executive;

(3) attend meetings of the executive;

(4) recommend measures for adoption to the executive;

(5) prepare and submit reports that he considers advisable or that the executive requires;

(6) keep the executive fully advised on the financial condition of the county;

(7) prepare and submit a budget for each fiscal year; and

(8) perform other duties that the executive requests by resolution.

(c) If the administrator is absent from his office due to illness, death, vacation, resignation, or removal, the president of the

executive, if any, or a qualified person appointed by the executive shall act as administrator until the administrator returns to his duties or the executive appoints a new administrator.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1981, P.L.11, SEC.140.*

#### **IC 36-2-2-15**

##### **Administration of oaths; enforcement powers of executive; execution of executive orders by county sheriff**

Sec. 15. (a) The county auditor or a member of the executive may administer all oaths required by this chapter.

(b) The executive may:

(1) punish contempt by a fine of not more than three dollars (\$3) or by imprisonment for not more than twenty-four (24) hours; and

(2) enforce its orders by attachment or other compulsory process.

(c) Fines assessed by the executive shall be executed, collected, and paid over in the same manner as other fines.

(d) The county sheriff or a county police officer shall attend the meetings of the executive, if requested by the executive, and shall execute its orders.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1980, P.L.125, SEC.15; P.L.131-1983, SEC.11.*

#### **IC 36-2-2-16**

##### **Accounts chargeable against county; sums for expenses**

Sec. 16. The executive may:

(1) approve accounts chargeable against the county; and

(2) direct the raising of sums necessary for county expenses.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-17**

##### **Audit of accounts**

Sec. 17. The executive may audit the accounts of officers who deal with money belonging to or appropriated for the benefit of the county.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1980, P.L.125, SEC.16.*

#### **IC 36-2-2-18**

##### **Annual settlement by executive and county treasurer**

Sec. 18. At the regular meeting of the executive in January of each year, the executive and the county treasurer shall make a settlement for the preceding calendar year. A copy of the settlement sheet shall be copied in the order book of the executive.

*As added by Acts 1980, P.L.212, SEC.1.*

**IC 36-2-2-19****Annual statement of county's receipts and expenditures; posting and publication**

Sec. 19. At its second regular meeting each year, the executive shall make an accurate statement of the county's receipts and expenditures during the preceding calendar year. The statement must include the name of and total compensation paid to each county officer, deputy, and employee. The executive shall post this statement at the courthouse door and two (2) other places in the county and shall publish it in the manner prescribed by IC 5-3-1.

*As added by Acts 1980, P.L.212, SEC.1. Amended by Acts 1980, P.L.125, SEC.17; P.L.64-1995, SEC.11; P.L.98-2000, SEC.19.*

**IC 36-2-2-20****County property; sale; acquisition; orders; ordinance**

Sec. 20. The county executive may make orders concerning county property, including orders for:

- (1) the sale of the county's public buildings and the acquisition of land in the county seat on which to build new public buildings; and
- (2) the acquisition of land for a public square and the maintenance of that square.

However, a conveyance or purchase by a county of land having a value of one thousand dollars (\$1,000) or more must be authorized by an ordinance of the county fiscal body fixing the terms and conditions of the transaction.

*As added by Acts 1980, P.L.212, SEC.1.*

**IC 36-2-2-21****Repealed**

*(Repealed by Acts 1981, P.L.57, SEC.45.)*

**IC 36-2-2-22****Repealed**

*(Repealed by Acts 1981, P.L.57, SEC.45.)*

**IC 36-2-2-23****County property; licenses, permits, or franchises for use; utilities; state consent**

Sec. 23. (a) The executive may grant licenses, permits, or franchises for the use of county property if they:

- (1) are not exclusive;
- (2) are of a definite duration; and
- (3) are assignable only with the consent of the executive.

(b) If a public utility or municipally owned or operated utility that carries on business outside the corporate boundaries of municipalities in the county is engaged in an activity substantially similar to that for which a license, permit, or franchise for the use of county property is sought, the executive may grant the license,

permit, or franchise only with the consent of the utility regulatory commission. The commission may give its consent only if it determines, after a public hearing of all interested parties, that public necessity and convenience require the substantially similar activity.

(c) The provisions of this section that concern securing the consent of the utility regulatory commission do not apply to municipally owned or operated utilities.

*As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.23-1988, SEC.117.*

#### **IC 36-2-2-24**

##### **County courthouse, jail, and public offices**

Sec. 24. (a) The executive shall establish and maintain a county courthouse, county jail, and public offices for the county clerk, the county auditor, the county recorder, the county treasurer, the county sheriff, the county surveyor, and the county superintendent of schools.

(b) Offices for the surveyor and superintendent of schools must be in the courthouse or at the county seat.

(c) Offices for the sheriff may be located:

- (1) in the courthouse;
- (2) inside the corporate limits of the county seat; or
- (3) outside the corporate limits of the county seat but within the limits of the county.

*As added by Acts 1980, P.L.212, SEC.1. Amended by P.L.65-1994, SEC.2.*

#### **IC 36-2-2-25**

##### **Notice, report, or statement; cost of publication; violation; offense**

Sec. 25. Whenever publication of a notice, report, or statement of any kind is required and a county is liable for the cost of that publication, the executive may not make or pay for publication in more than one (1) newspaper unless publication in two (2) newspapers is required. A person who violates this section commits a Class C infraction.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-26**

##### **Repealed**

*(Repealed by Acts 1981, P.L.11, SEC.63.)*

#### **IC 36-2-2-27**

##### **Appeal of decision of executive; aggrieved party; person not party to proceeding; time limitation**

Sec. 27. (a) A party to a proceeding before the executive who is aggrieved by a decision of the executive may appeal that decision to the circuit court for the county.

(b) A person who is not a party to a proceeding before the executive may appeal a decision of the executive only if he files with the county auditor an affidavit:

(1) specifically setting forth his interest in the matter decided; and

(2) alleging that he is aggrieved by the decision of the executive.

(c) An appeal under this section must be taken within thirty (30) days after the executive makes the decision by which the appellant is aggrieved.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-28**

##### **Appeal of decision of executive; appellant's bond; transcript of proceedings**

Sec. 28. (a) An appellant under section 27 of this chapter must file with the county auditor a bond conditioned on due prosecution of the appeal. The bond is subject to approval by the auditor, and it must be in an amount sufficient to provide security for court costs.

(b) Within twenty (20) days after he receives the appeal bond, the auditor shall prepare a complete transcript of the proceedings of the executive related to the decision appealed from and shall deliver the transcript, all documents filed during the proceedings, and the appeal bond to the clerk of the circuit court.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-29**

##### **Appeal of decision of executive; docket; court decision**

Sec. 29. (a) An appeal under section 27 of this chapter shall be docketed among the other causes pending in the circuit court and shall be tried as an original cause.

(b) A court may decide an appeal under section 27 of this chapter by:

(1) affirming the decision of the executive; or

(2) remanding the cause to the executive with directions as to how to proceed;

and may require the executive to comply with this decision.

*As added by Acts 1980, P.L.212, SEC.1.*

#### **IC 36-2-2-30**

##### **Employment of attorney to represent and advise executive**

Sec. 30. (a) The executive may employ and fix the compensation of an attorney to represent and advise the executive.

(b) For the purposes of Section 9, Article 2 of the Constitution of the State of Indiana, employment by a county executive as an attorney does not constitute a lucrative office.

*As added by P.L.137-1989, SEC.12.*